

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

RUSSELL A. FOLKERS,)	
)	
Plaintiff,)	No. C 07-2066
)	
vs.)	ORDER
)	
CITY OF WATERLOO, et al.,)	
)	
Defendants.)	
)	

This matter is before the court on the Magistrate Judge's Report and Recommendation, filed October 12, 2007, and objections thereto. Briefing concluded November 7, 2007. Adopted.

The Report and Recommendation fully characterizes this matter wherein plaintiff seeks a preliminary injunction directing defendants to return his dog pending his municipal appeal hearing before defendants, and determining that a portion of the Waterloo ordinance defining "dangerous dog" is unconstitutionally vague and may not be relied upon by defendants in the course of any municipal appeal hearings related to this action.

For the reasons set forth in his decision, the Magistrate Judge recommends that the Motion for Preliminary Injunction be denied as to plaintiff's request for return of the dog pending the appeal hearing, and granted as to plaintiff's request

that defendants be enjoined from relying upon the third alternative definition of “dangerous dog” as set forth in Waterloo Ordinance §5-1B-1(C).

Plaintiff objects to the Magistrate Judge’s finding as to the absence of a threat of irreparable harm, and objects to the absence of findings as to whether his right to substantive and procedural due process has been violated by the seizure and deprivation of the dog, and as to whether defendants’ seizure and continued possession of the dog is arbitrary and capricious. Plaintiff further objects to the Magistrate Judge’s finding regarding the risk of the dog running free if returned to plaintiff during pendency of the appeal, and to the Magistrate Judge’s analysis of the probability of success on the merits of his claim. Finally, plaintiff objects to the finding as to the public interest in not permitting dangerous dogs to run loose.

Having reviewed the thorough and comprehensive Report and Recommendation as well as the record in accordance with the appropriate standards, it is the court’s view that plaintiff has not made a showing of irreparable harm for the reasons set forth in the Report and Recommendation. Having failed to make that threshold showing, plaintiff is not entitled to a preliminary injunction directing the return of the dog pending the municipal appeal hearing. Dataphase Sys., Inc. v. CL Sys., Inc., 640 F2d 109, 114 n.9 (8th Cir. 1981).

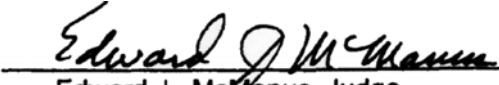
No objection has been made to the recommendation that defendants be enjoined from relying upon the third alternative definition of “dangerous dog” as set forth in Waterloo City Ordinance §5-1B-1(C), and the court finding no error in the Report and Recommendation in this regard, that recommendation shall be adopted.

It is therefore

ORDERED

1. Report and Recommendation adopted.
2. Motion for Preliminary Injunction denied as to the return of plaintiff’s dog pending municipal appeal hearing, and granted as to defendants’ reliance upon the third alternative definition of “dangerous dog” as set forth in Waterloo Ordinance §5-1B-1(C).
3. The Temporary Restraining Order filed October 2, 2007, staying the Waterloo City Council from proceeding with the appeal hearing, is vacated.

November 14, 2007.


Edward J. MoManus, Judge
UNITED STATES DISTRICT COURT